

### **REMARKS**

Reconsideration of this application as amended is respectfully requested.

In the Office Action, claims 1-76 are pending and rejected.

In this response, claim 55 has been cancelled. Claims 1, 25, and 54 have been amended. No new matter has been added. Thus, claims 1-54, and 56-76 remain pending.

### **35 U.S.C. §103 Rejections**

Claims 1-2, 5-6, 8, 11, 13-14, 17, 19-25, 28, 31, 33-34, 37, 39, 40, 43-44, and 53 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kleinpeter III et al. (US Patent No. 6,907,463, hereinafter "*Kleinpeter*") in view of Chiu (US Pub. No. US2003/0158958, hereinafter "*Chiu*"), and in further view of Jandel (US Patent No. 6,763,371, hereinafter "*Jandel*").

Claims 4, 10, 18, 27, 30, 38 and 41-42 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu-Jandel* in view of Son et al. (US Pub. No. US 2003/0126277, hereinafter "*Son*").

Claims 3, 7, 9, 15-16, 26, 29, 35-36, and 45-50 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu-Jandel* in view of Schleicher et al. (US Pub. No. US2002/0138576, hereinafter "*Schleicher*").

Claims 12 and 32 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu-Jandel* in view of *Perkes*.

Claims 51 and 52 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu-Jandel-Schleicher* in view of *Perkes* et al. (US Pub. No. US 2002/0194601, hereinafter "*Perkes*").

Claims 54-55, 57, 59-61, 63-65, and 71-72 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son* in view of *Doyle* (US Patent No. 7,310,679, hereinafter "*Doyle*").

Claims 56, 62, and 67-70 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Doyle* in view of *Schleicher*.

Claims 58 and 66 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Doyle* in view of *Perkes*.

Claims 73-75 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Doyle* in view of *Chiu*.

Claim 76 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Jandel-Son-Dolye-Chiu* in view of *Schleicher*.

Applicants do not admit that the above references are prior art and reserves the right to challenge these references at a later date.

### **The References cited in the Office Action**

*Kleinpeter* teaches a method to exchange files between users in a network environment. This method includes the steps of executing a software agent on multiple users' computing systems. These software agents establish a connection from their respective computing systems when logging into a network environment. An agent server, executed on the network environment, directs the software agents to establish direct connection between their respective computing systems in response to file requests from various users (See Abstract). The agent server determines a computer system having the requested file, and instructs the computer system retaining the requested file on how to transfer that file to the requesting user. In an event that a file transfer is interrupted, the server can determine what point in the file the transfer has been interrupted. (*Kleinpeter* column 2, lines 41-60).

*Jandel* teaches a server unit in a communications network for receiving information from client units. The information includes at least part of the state information about a distributed interactive application. The server unit includes a device for storing application state information, and a device for forwarding the state information received from the client to at least one other node in the network and for transmitting at least part of the information stored in the storing device to the client. (See Abstract)

*Chiu* teaches an electronic content delivery system using a network of end-user devices. Each end-user device has storage capability for storing contents in a distributed fashion, and for making the contents available to other devices in a P2P fashion. (See Abstract)

*Schleicher* teaches a method and a system for generating revenue in a peer-to-peer file delivery network that includes a server node and client nodes. Subscription-based content may be made available for free or for a fee. If the content is fee-based, then a fee may be charged to the users for receiving or opening the fee-based content. The fee charged may be in addition to, or in lieu of, the fee charged to the providers of the subscription-based content. (See Abstract)

*Son* teaches an apparatus for providing a multimedia streaming service by using a P2P approach including a number of clients that distribute and store multimedia data, and a number of servers that manage a multimedia data catalog. The client searches for multimedia data in its local disk, and calls for the data catalog to the server if there is no corresponding data in the local disk. The client then searches for the multimedia data catalog, and receives data from a client that stores the corresponding data. In case no clients store the corresponding data, the client tries to receive data from the server. (See Abstract)

*Perkes* teaches a system, method and program for delivering content utilizing a master agent. A peer-to-peer connection is provided via a network between at least a broadcasting agent and a viewing agent to transmit contents. In addition, *Perkes*

teaches collecting, collating, organizing and analyzing information about a consumer's computer and peripheral usages, and using the information to select, download and coordinate the presentation of advertising and viewing content. (See Abstract)

*Doyle* teaches a plurality of wireless clients that can operate in a shared manner using a contention based protocol. The clients can be placed into a contention free mode of operation, which prevent the clients from initiating a data transfer. Once the wireless clients are prevented from initiating access to the wireless network, a video gateway can transmit video content in a deterministic manner to some of the wireless clients. (See Abstract)

## References Distinguished

Applicants respectfully submit that *Kleinpeter*, *Jandel*, *Chiu*, *Schleicher*, *Perkes*, *Son* and *Doyle*, individually or in combination, do not teach or suggest all pending claims limitations. To render a claim obvious, the cited references must teach or suggest each and every element of the claim.

Independent claims 1 and 25, which are rejected based on *Kleinpeter* in view of *Chiu* and *Jandel*, recite, in part, **"monitoring the prioritized lists of the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients."**

According to *Kleinpeter*, its users submit a list of requested files to a central web server, and an agent server organizes the requested files and matches them with the nearest available agents with the requested files (*Kleinpeter* column 1, lines 58-64). However, *Kleinpeter* does not disclose a prioritized list of requested files. Further, as illustrated in its Figure 3B, *Kleinpeter*'s agent server receives from agents various file transferring results, such as "success", "active agent cannot communicate with the passive agent", "file does not exist", "error in getting file", or "client never got file", etc. However, these results are generated when the transferring of the requested files are completed, either successfully, or unsuccessfully. Therefore, generating these results

cannot be construed as monitoring the lists of requested files during the transferring of the files. Therefore, *Kleinpeter* does not teach or suggest "a prioritized list", nor does it teach or suggest "monitoring the prioritized lists of the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients."

Likewise, in *Chiu*, each user makes a request to a service provider for content information, and the service provider initiates a transfer from a first end-user's device to a second end-user's device. Even though *Chiu*'s service provider continuously keeping track of the whereabouts of any content information and keeping track of the progress of the download (*Chiu* paragraph [0004]), it does not monitor any prioritized list of content information. Therefore, *Chiu* does not teach or suggest "a prioritized list", nor does it teach or suggest "monitoring the prioritized lists of the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients."

In *Jandel*, its priority information lists the client's priorities regarding different application objects provided by the application access servers. In a real-time gaming environment, the movement of a friendly player or a hostile player should be given a high priority in a player's priority list, while things happening farther away should be given a low priority. (*Jandel* column 5, lines 53-58, and column 6, lines 22-25). Based on a client's priority list and a flag, the application access server determines whether or not a certain object needs to be sent to the client from the application access server. However, *Jandel* does not teach or suggest determining whether to send application objects from the application access server or from other clients. Thus, *Jandel* does not teach or suggest "monitoring the prioritized lists of the clients during the transferring of the media items to determine whether to transfer the media items from the central repository or from some of the clients."

Since the cited references, whether considered alone or in combination, fail to teach "monitoring the prioritized lists of the clients during the transferring of the media

items to determine whether to transfer the media items from the central repository or from some of the clients," claims 1 and 25 are allowable over the cited references. Moreover, *Jandel* actually teaches away from combination with peer-to-peer references, such as *Kleinpeter* and *Chiu*. The Office Action provides that the motivation to combine *Kleinpeter-Chiu* with *Jandel* is to "improve the performance of the system." However, *Jandel* states that "peer-to-peer synchronization has obvious scalability problems since the network load is proportional to the square of the number of players," and "peer-to-peer games over the Internet suffer from unpredicted delays and frequently collapse because of loss of synchronizations." *Jandel* suggests that "peer-to-peer synchronization is best adapted to small networks, with communication over relatively short distances and between a limited number of users." (*Jandel* column 2, lines 4-20). Thus, *Jandel* teaches away from utilizing its disclosure in a peer-to-peer environment. Since independent claims 1 and 25, as well as their respective dependent claims, essentially recite using peer-to-peer connectivity, there is no motivation to combine *Jandel* with any of the other cited references in order to provide the benefits as suggested by the Office Action. Accordingly, as least for the above reasons, Applicants respectfully submit that the invention as claimed in independent claims 1, 25, as well as their respective dependent claims 2-24 and 26-53, are not rendered obvious by *Kleinpeter* in view of *Chiu* and *Jandel*, and respectfully request the withdrawal of the above rejections under 35 U.S.C. 103(a).

It may be noted that with respect to the remaining references, *Schleicher* discloses a priority level for delivery a particular content (*Schleicher* paragraph [0027]). However, the priority level is for bandwidth allocation for a particular content, therefore it is not a prioritized list of subscription-based content. Thus, *Schleicher* does not disclose a prioritized list, nor does it disclose monitoring the prioritized lists of the users during transferring of the media items. Lastly, neither *Son* nor *Perkes* teaches or suggest monitoring prioritized lists during transferring of the media items.

Therefore, the paragraphs cited in the Office Action with respect to *Kleinpeter*, *Chiu*, *Jandel*, *Schleicher*, *Perkes* or *Son*, individually or in combination thereof, do not

teach or suggest all limitations of independent claims 1 and 25. In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waving any argument regarding that claim.

Since none of the cited references teach or suggest each and every element of claims 1 or 25, claims 1 and 25 are allowable over each reference, whether considered alone or in combination. Claims 2-24, which depend from claim 1, and claims 26-53, which depend from claim 25, are allowable at least for depending from an allowable base claim, and potentially for other reasons as well.

Further, claim 2 recites "upon completion of transfer of a particular media item at a given client, indicating at the client that the particular media item may be purchased for use." According to paragraph [0015] of *Chiu*, its software component 141 communicates with a digital rights management service 160 to ensure proper protection of the content. If the content is authorized for distribution, the software component 141 stores the authorized content on local storage. However, *Chiu* evaluates whether the content is authorized for downloading, it does not disclose, upon completion of downloading the content, indicating whether the content may be purchased for use. Therefore, for any of these reasons, claim 2 is allowable over *Kleinpeter* in view of *Chiu* and *Jandel*.

Likewise, claim 51 recite that "each encryption key automatically expires after some period of time." In paragraph [0217] of *Perkes*, its system allows encryption keys to be regularly updated during a secure session. However, *Perkes* does not disclose its dynamic key refreshing is to replace the encryption keys that are expired after some period of time. Therefore, *Perkes* may regularly update its keys even though these keys are not expired after some period of time. Thus, for any of these reasons, claim 51 is allowable over *Kleinpeter* in view of *Chiu* and *Perkes*.

Thus, Applicants respectfully request the withdrawal of the rejections of the above claims under 35 U.S.C. 103(a) over *Kleinpeter, Chiu, Jandel, Schleicher, Perkes* or *Son*, individually or in combination thereof.

Independent claim 54, which is rejected over *Kleinpeter-Jandel-Son* in view of *Doyle*, includes the language "determining media items available on a plurality of devices having **peer-2-peer** connectivity to one another;... selecting a particular media item to be delivered to a first device of the plurality of devices based on the priority lists and the media items determined to be available on the first device, **wherein the selection grants high priority to any of the plurality of devices with no media items to watch...**"

As discussed above, *Jandel* teaches away from utilizing its disclosure in a peer-to-peer environment. Thus, there is no motivation to combine *Jandel* with P2P references *Kleinpeter*, or *Son*, in order to provide the benefit (to improve the performance of the system) as suggested by the Office Action. Thus, the above combination cannot render obvious the Applicants' claim 54.

Further, the Office Action admits that *Kleinpeter-Jandel-Son* do not disclose that the selection grants high priority to any of the plurality of devices with no media items to watch (Page 20 of the Office Action), and relies on *Doyle* for such disclosure.

In *Doyle*, step 61 places the wireless clients in a contention free mode of operation before determining at step 63 a specific order of transmitting data from the gateway 110 to the clients (*Doyle* column 6, lines 38-63). However, in the contention free mode of operation, the wireless clients are prevented from initiating accesses to the wireless network, and only the gateway 110 is allowed to initiate access and transmit data to these clients (*Doyle* column 2, lines 30-33). Thus, in order to grant priority to the wireless clients for data transmission, *Doyle's* clients cannot initiate any data transmission with other wireless clients, and cannot transfer data from one client to another client. Accordingly, *Doyle* does not allow, and teaches away, peer-to-peer

communication when its gateway 110 is determining the order, or the priority, of the clients to receive data. If peer-to-peer data transmission is not allowed for a peer-to-peer environment, then the client devices are essentially disabled, and cannot have a flawless viewing experience. Thus, the teachings of *Doyle* are incompatible with a P2P system, and there is no motivation to combine *Doyle* with any of the other cited references in order to provide the benefit of "to give a client a flawless viewing experience," as suggested at page 21 of the Office Action. Hence, Applicants respectfully submit that independent claim 54 as well as its dependent claims 56-76 are not rendered obvious by *Kleinpeter-Jandel-Son* in view of *Doyle*, and respectfully request the withdrawal of the above rejections under 35 U.S.C. 103(a).

In view of the above remarks, a specific discussion of the dependent claims of claim 54 is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waving any argument regarding that claim.

Since none of the cited references teach or suggest each and every element of claim 54, claim 54 is allowable over each reference, whether considered alone or in combination. Claims 55-76, which depend from claim 54, are allowable at least for depending from an allowable base claim, and potentially for other reasons as well.

For example, claim 58 recites, in part, "determining a device least most recently served by delivery of a media item." According to paragraph [0058] of *Perkes*, its delivery scheduler uses the history of recent logged activity and past history stored in the user's profile to determine the optimum time for the download. However, such determination is used to optimize the usage of network bandwidth; it is not used to determine a user's device which is least most-recently served with download. Therefore, for any of these reasons, claim 58 is allowable over *Kleinpeter, Jandel, Son, Doyle* and *Perkes*.

Thus, Applicants respectfully request the withdrawal of the rejections of the above claims under 35 U.S.C. 103(a) over *Kleinpeter, Jandel, Chiu, Schleicher, Perkes, Son* and *Doyle*, individually or in combination thereof.

## Conclusion

A Notice of Allowance is therefore respectfully requested. Should the Examiner find that a telephone or in-person conference would expedite the prosecution of this Application further, he is invited to contact the Applicants' counsel at the contact listed below for such a conference.

Please charge any deficiency in fees or credit any overpayment to our Deposit Account No. 50-2207, from which the undersigned is authorized to draw.

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Respectfully submitted,

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